

THE HONORABLE ROBERT B. LEIGHTON

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TROY X. KELLEY,

Defendant.

Case No. 3:15-cr-05198-RBL

[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION TO
CONTINUE TRIAL DATE AND
ENTERING CASE SCHEDULING
ORDER

**NOTE FOR:
Friday, September 18, 2015**

The Court, having reviewed the record and files in this case and after a consideration of all relevant information and the circumstances of this case, finds that the ends of justice will best be served by continuing the trial date to March 14, 2016, and orders the parties to comply with the complex case schedule set forth below. The ends of justice outweigh the best interests of the public and the defendant in having the matter brought to trial sooner.

The Court makes the following findings:

1. Defendant Troy X. Kelley is charged in a Superseding Indictment with violations of federal criminal law, including: (1) one count of concealment and possession of stolen property in violation of 18 U.S.C. Section 2315; (2) four counts of false declarations in deposition testimony provided in civil litigation in violation of Title 18 U.S.C. Section 1623; (3) five counts of money laundering in violation of Title 18 U.S.C. Section 1956 (with alleged

1 predicate violations of Title 18, United States Code, Sections 1341 and 1343); (4) one count of
2 “corrupt interference with Internal Revenue laws” in violation of Title 26 United States Code,
3 Section 7212(a); (5) five counts of filing a false tax return in violation of Title 26, United
4 States Code, Section 7206(1); and (6) one count of making false statements to a federal agent
5 in violation of Title 18, United States Code, Section 1001. The Superseding Indictment alleges
6 a scheme lasting more than a decade to defraud title companies and/or borrowers and conceal
7 the proceeds thereof.

8 2. The government originally returned an indictment in April 2015. Nearly five
9 months later, on September 3, 2015, the government returned the Superseding Indictment,
10 which added five new money laundering counts relating to financial transactions occurring
11 between 2011 and 2015. These money laundering counts allege new predicate crimes of mail
12 and wire fraud, which had not been previously alleged in the original indictment.

13 3. The Superseding Indictment also adds three counts of filing false income tax
14 returns relating to tax years 2011-2013.

15 4. On August 24, 2015, Troy X. Kelley retained new trial counsel. While this
16 change was voluntary, it was not done for the purpose of delay. Counsel has indicated that the
17 current time remaining until trial is insufficient to prepare for trial on the new charges and
18 those brought in April 2015, in light of counsel’s current trial schedule.

19 5. Defense counsel has indicated that the discovery in this case is voluminous and
20 complex; involves the analysis of multiple complex computer systems; and involves
21 investigations by the government in multiple jurisdictions. Because of the appointment of new
22 counsel, defendant will require substantial additional time in order to adequately review the
23 discovery and prepare for any motions and trial.

6. Based on the foregoing, the Court finds that the ends of justice will best be served by a continuance of the trial date and outweigh the best interests of the public and the defendant in a speedy trial, within the meaning of 18 U.S.C. § 3161(h)(7)(A).

7. The Court further finds that the failure to grant such a continuance in this case would likely result in a miscarriage of justice because the defendant would be denied the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. 18 U.S.C. § 3161(h)(7)(B)(i) and (iv).

8. The Court finds, pursuant to 18 U.S.C. § 3161(h)(7)(B)(ii), that the case is so unusual and complex, due to the nature of the prosecution, the existence of novel questions of fact or law, and the volume of discovery that it would be unreasonable to expect adequate preparation for trial within the time limits established by 18 U.S.C. § 3161.

9. The Court finds, pursuant to 18 U.S.C. § 3161(h)(7)(A) and (h)(7)(B)(iv), that the period of delay is reasonable.

10. Any and all period of delay resulting from this continuance, from the date of this order, until the date of the rescheduled trial, shall be excludable time pursuant to Title 18, United States Code, Section 3161(h)(7)(A), for purposes of computation of the time limitations imposed by the Speedy Trial Act, Title 18, United States Code, Section 3161 through 3164.

It is therefore ORDERED that trial of this matter is hereby continued to 9:00 a.m. on March 14, 2016, and that the parties shall observe the following complex case schedule:

Event	Date Ordered
Government to provide discovery under Fed. R. Crim. P. 16(a)(1)(A) – (F) and Local CrR 16(a)(1), with continuing obligation as set forth in Rule 16(c)	Already passed
Government to provide its preliminary exhibit list related to its case in chief	December 4, 2015

Event	Date Ordered
Government to provide any additional evidence favorable to the defendant or material to defendant's guilt or punishment, including any agent notes, memoranda, or e-mail containing <i>Brady</i> material	December 4, 2015
Government's preliminary identification of all 404(b) evidence	December 4, 2015
Government to provide its preliminary witness list relevant to its case in chief	December 4, 2015
Government to provide discovery under Rule 16(a)(1)(G) (expert discovery)	December 4, 2015
Deadline to file Pretrial Motions. Response briefs due January 11, 2016; Reply briefs due January 19, 2016.	December 28, 2015
Government to produce Jenks Act, Rule 26.2, and <i>Giglio</i> impeachment materials, including information relating to known non-testifying declarants under Fed. R. Evid. 806 (if any)	December 28, 2015
Defendant to make preliminary production of discovery under Rule 16(b)(1)(A)-(B) and Local CrR(a)(2), based on current good faith assessment of materials in his possession, with continuing obligation as set forth in Rule 16(c), and without prejudice to subsequent production on February 2, 2016.	January 11, 2016
Status Conference & Hearing on Pretrial Motions	January 29, 2016
Defendant to provide discovery under Rule 16(b)(1)(A)-(B) and Local CrR 16(a)(2) (with continuing obligation as set forth in Rule 16(c))	February 2, 2016
Defendant to provide his preliminary exhibit list related to his case-in-chief	February 2, 2016
Defendant to provide his preliminary witness list related to his case-in-chief	February 2, 2016
Defendant to provide discovery under Rule 16(b)(1)(C) (expert discovery)	February 2, 2016
Status Conference	February 9, 2016
Government to produce all summary exhibits and underlying data under Fed. R. Evid. 1006; Government to provide rebuttal expert disclosures	February 16, 2016

Event	Date Ordered
Government to produce its final witness list and exhibit list related to its case-in-chief and final disclosure of Rule 404(b) evidence	February 16, 2016
Defendant to produce his final witness list and exhibit list related to his case-in-chief	February 22, 2016
Parties to file motions <i>in limine</i> and motions re: 404(b) and inextricably intertwined evidence. Response briefs due 02/26/16; Reply briefs due 03/02/16.	February 22, 2016
Defendant to produce all summary exhibits and underlying data under Fed. R. Evid. 1006; Defense to provide rebuttal expert disclosures	February 22, 2016
Trial Briefs, Proposed Jury Instructions, Voir Dire and Verdict Forms	February 22, 2016
Pretrial conference; Hearing on motions <i>in limine</i> (if necessary)	March 7, 2016
Trial	March 14, 2016 9:00 a.m.

DATED this ____ day of September, 2015.

HONORABLE ROBERT B. LEIGHTON

Presented by:

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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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s/Susie Clifford
